

AG Contract No. KR04-1047TRN  
ADOT ECS File No. JPA 04-037  
Project No.: TEA-PRV-0(003)  
Project: Lake Valley Road-Mt. Valley  
Park, Multiuse Pathway  
TRACS No.: SL516 01C  
Budget Source Item No:

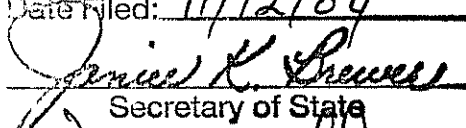
## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE TOWN OF PRESCOTT VALLEY

THIS AGREEMENT is entered into 12 November, 2004 pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and TOWN OF PRESCOTT VALLEY acting by and through its MAYOR and TOWN COUNCIL (the "Town").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State
2. The Town is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.
3. Congress has authorized appropriations for improvements, but not limited to, twelve eligible categories of transportation enhancement activities.
4. Such project within the boundary of the Town has been selected by the Town; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) and the State for their approval.
5. The Town, in order to obtain federal funds for the construction of the project, is willing to provide Town funds to match federal funds in the ratio required or as finally fixed and determined by the Town, State and FHWA, including actual construction engineering and administration costs (CE).
6. The only interest of the States in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.

NO. 27216  
Filed with the Secretary of State  
Date Filed: 11/12/04  
  
Secretary of State

By: 

7. The work embraced in this Agreement is for the construction of a multi-use path beginning at the Liberty Traditional School on Lake Valley Road, north to Lakeshore Drive, continuing east on Lakeshore Drive to the Mountain Valley Park, (Exhibit A)

**Design:** The Town agrees to pay 100% of the design costs associated with the project.

<b>Construction TRACS No.: SL516 01C</b>	
Federal-aid funds @ 94.5% of	\$500,000.00
Town Funds @ 5.7% of	<u>\$ 28,500.00</u>
Town over match @ 100% of	\$ 76,500.00
<b>*Total Estimated Cost of the Project</b>	<b>\$605,000.00</b>

\*(Includes construction, construction engineering administration, and incidentals)

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## II. SCOPE OF WORK

### 1. The State will:

a. Agree to be the Town's authorized agent for the project and submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction and funding. Should costs exceed the maximum federal funds available, it is understood and agreed that the Town will be responsible for any overage.

b. Approve the project if such project construction funds are available by FHWA for construction of the project. The State and FHWA hereby designated the Town to self-administer the project.

c. Upon execution of this Agreement, make payments to the Town up to a maximum not to exceed the federal aid funds shown for the direct actual cost of the construction of the project, plus construction engineering, after receipt and approval of a reimbursement request.

d. Not be obligated to maintain said project, should the Town fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

### 2. The Town will:

a. With the aid and consent of the FHWA and the State using Arizona Procurement Procedures, proceed to design, advertise for, receive and open bids, subject to the concurrence of FHWA and the State. Enter into contract(s) with a firm(s) to whom the award is made for the construction of the project. The project will be performed, completed, accepted and paid for in accordance with the requirements of the project Plans, Special Provisions and Standard Specifications at the lowest responsible bid price.

b. Provide personnel to administer and supervise construction. All construction project change orders are to be copied to the State. The FHWA will participate in the construction administration cost provided by the Town up to 15 percent (15%) of the cost of construction. Construction administration costs not participated in by FHWA shall be borne by the Town.

c. Acquire any necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bids and shall remove from the proposed right-of-way

all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the project area, and hereby certifies that all obstructions and encroachments have been or will be removed there from, prior to the start of construction.

d. Not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use.

e. Should unforeseen conditions or circumstances increase the cost of said Project such that a change in the extent or scope of work called for in this Agreement become necessary, the Town shall be obligated to incur and pay for said increased costs.

f. Consent to any inspections performed by the State, provide records or audit any books of the Town in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and federal government.

g. Shall furnish all water for landscape installation during the construction phase, a point of connection (POC) for the irrigation system, and all water thereafter necessary to properly maintain the landscape, all at Town expense.

h. Provide electrical power, water connections and landscape maintenance during and after the construction phase, all at the Town's expense.

i. Upon completion of the project, shall provide for, at its own cost and as an annual item in its budget, perpetual and proper maintenance to the project, including but not limited to:

- Electrical power
- Water
- Maintaining healthy landscape plantings
- Eradication of weeds
- Operation and cost of irrigation
- Operation and cost of lighting
- Maintaining safe access to pedestrian facilities and bicycle facilities

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this Agreement or for any resulting construction project. The Town, in regard to the Town's relationship with the State only, assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The Town shall require its contractors to name the State and ADOT as an additional insured in the contractor's insurance policies. The Town shall also require its contractors to name the State and ADOT as an additional indemnitee in the Town's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees of the Town, any of its agents, officers and

employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of the construction and construction engineering work covered by this Agreement is to be borne by FHWA and Town, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this Agreement. Therefore, Town agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

3. The terms and conditions and provisions of this Agreement shall remain in full force and effect until completion of the said project, except any provisions for electrical power, water and maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of the Project construction contract, upon thirty- (30) -days written notice to the other party. It is understood and agreed that, in the event the Town terminates this Agreement, the State shall in no way be obligated to maintain the said Project.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 pertaining to the State audit are applicable to this contract. In the event of such an audit, the Town will bear all costs associated therewith.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds. Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue - 616E  
Phoenix, AZ 85007  
FAX (602)-712-7424

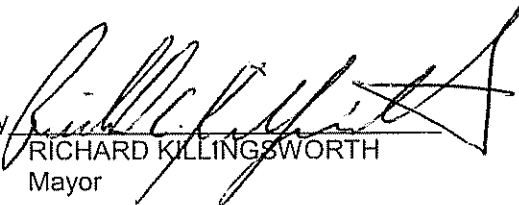
Town of Prescott Valley  
Larry Tarkowski - Town Manager  
7501 E. Civic Circle  
Prescott Valley, AZ 86314  
Office (928)-759-3100  
FAX (928)-759-3125

11. Pursuant to Arizona Revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.


---

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

TOWN OF PRESCOTT VALLEY

By   
RICHARD KILLINGSWORTH  
Mayor

STATE OF ARIZONA  
Department of Transportation

By   
SUSAN TELLEZ  
Contract Administrator

ATTEST:

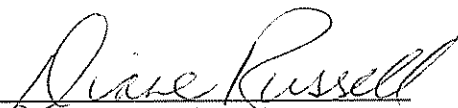
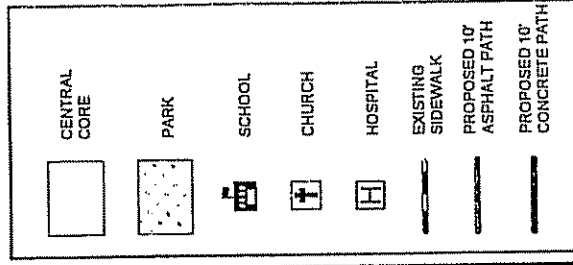
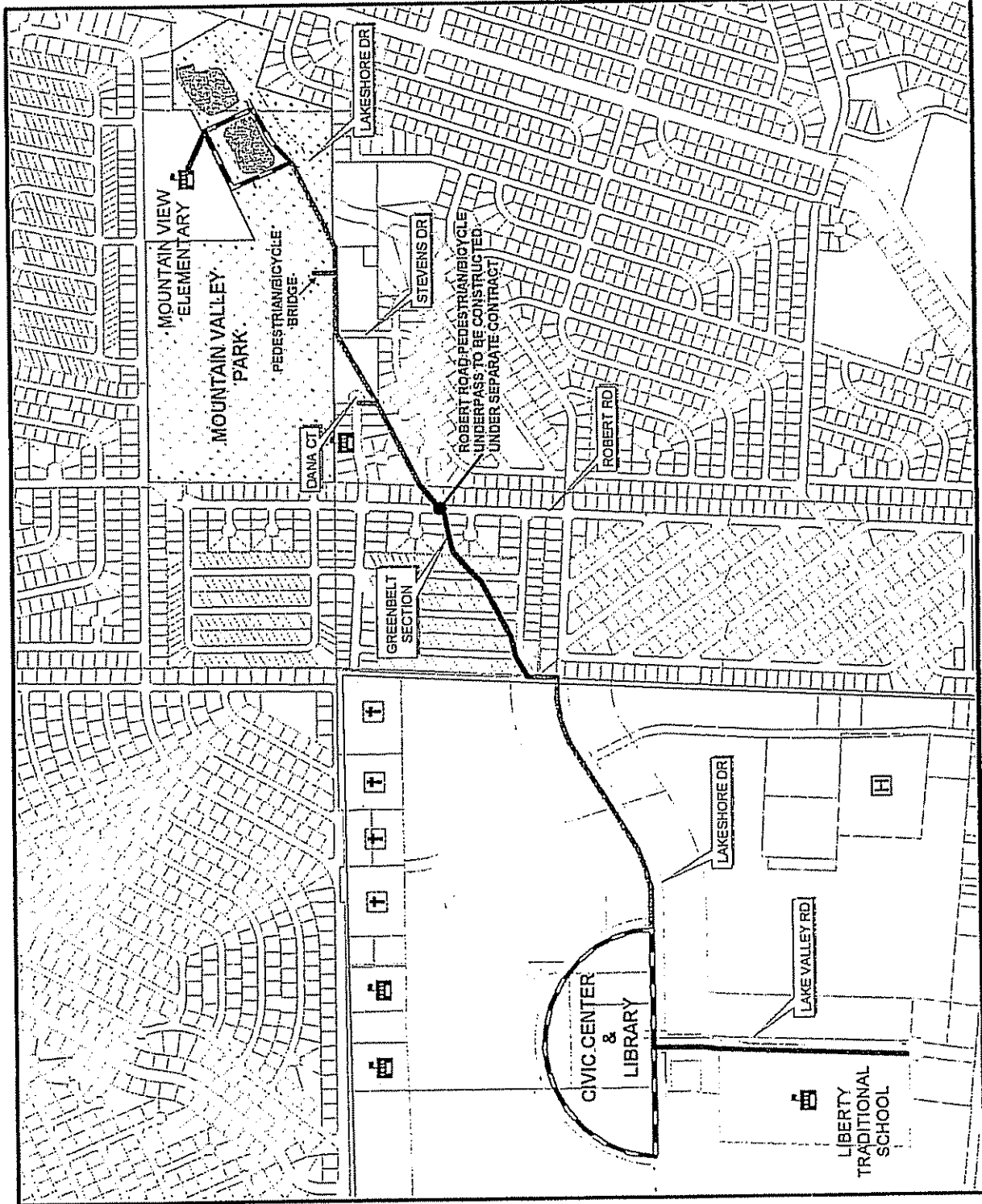
By   
DIANE RUSSELL  
Town Clerk

Exhibit A

PROJECT AREA MAP  
CENTRAL CORE MULTI-USE PATH  
PRESCOTT VALLEY, ARIZONA



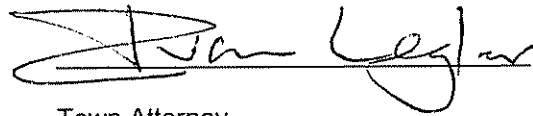
FEBRUARY 2003



APPROVAL OF THE TOWN OF PRESCOTT VALLEY

I have reviewed the above referenced proposed intergovernmental Agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and TOWN OF PRESCOTT VALLEY and declare this Agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 24<sup>th</sup> day of September, 2004.



Town Attorney

**RESOLUTION NO. 1305**

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, A MUNICIPAL CORPORATION OF ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA (ARIZONA DEPARTMENT OF TRANSPORTATION) AND THE TOWN OF PRESCOTT VALLEY FOR THE DEVELOPMENT OF A MULTI-USE PATH BEGINNING AT THE LIBERTY TRADITIONAL SCHOOL ON LAKE VALLEY ROAD, NORTH TO LAKESHORE DRIVE, CONTINUING EAST ON LAKESHORE DRIVE TO MOUNTAIN VALLEY PARK; AUTHORIZING THE MAYOR (OR, IN HIS ABSENCE, THE VICE-MAYOR) TO EXECUTE THE INTERGOVERNMENTAL AGREEMENT; AND PROVIDING THAT THIS RESOLUTION SHALL BE EFFECTIVE AFTER ITS PASSAGE AND APPROVAL TO LAW.

WHEREAS, the Town Council at its regular meeting of September 23, 2004 approved an Intergovernmental Agreement between the State of Arizona and the Town of Prescott Valley for the Cross-Town Trail Improvements, ADOT Project; and

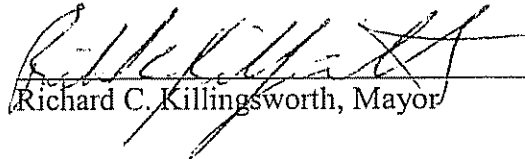
WHEREAS, ADOT requires that all Intergovernmental Agreements to fund these types of projects be approved by Resolution of the Mayor and Common Council committing to the project;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, ARIZONA, AS FOLLOWS:

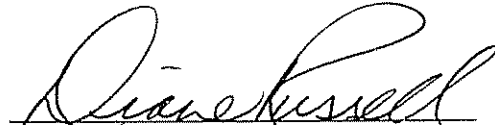
1. That the Mayor and Common Council hereby approve the Intergovernmental Agreement to develop a multi-use path beginning at the Liberty Traditional School on Lake Valley Road, North to Lakeshore Drive, continuing east on Lakeshore Drive to the Mountain Valley Park; AND authorize the Mayor (or, in his absence, the Vice-Mayor) to execute said Intergovernmental Agreement; and
2. That the Mayor and Common Council hereby commit to funding for the Town's share of this project as outlined in the Intergovernmental Agreement. The budgeting of this funding will occur in the fiscal year for which the project expenditures are expected to occur; and
3. That this resolution shall be effective after its passage and approval according to law.

RESOLVED by the Mayor and Common Council of the Town of Prescott Valley, Arizona, this 14<sup>th</sup> day of October, 2004



  
Richard C. Killingsworth, Mayor

ATTEST:

  
Diane Russell, Town Clerk

APPROVED AS TO FORM:

  
Ivan Legler, Town Attorney

**TOWN OF PRESCOTT VALLEY  
REQUEST FOR COUNCIL ACTION**

**Date: October 14, 2004**

**SUBJECT:** Resolution Approving Intergovernmental Agreement with ADOT Funding Cross-Town Trail (a.k.a. Central Core Multi-Use Path)

**SUBMITTING DEPARTMENT:** Public Works

**PREPARED BY:** Kimberly J. Moon, P.E., Capital Projects Coordinator, and  
Jack Richardson, P.E., Town Civil Engineer, for  
Larry Tarkowski, Interim Town Manager and Public Works Director

**AGENDA LOCATION:** Comments/Communications ☐, Consent ☒, Work/Study ☐,  
New Business ☐, Public Hearing ☐, Second Reading ☐

**ATTACHMENTS:** a.) Resolution Number 1305  
b.) Intergovernmental Agreement, as approved on September 23, 2004

**SUMMARY BACKGROUND:** The approved budget for Fiscal Year 2004/2005 includes the "Cross-Town Trail Improvements (ADOT) Project", also known as the Central Core Multi-Use Path Improvements Project, in the amount of \$605,000. The State of Arizona, through ADOT, has agreed to reimburse the Town for 100% of the expenditures, up to \$500,000, as per the Intergovernmental Agreement (IGA) that was approved by the Council on September 23, 2004. The Council action on September 23, 2004 didn't expressly adopt a Resolution as required by ADOT. This action will formally approve such a resolution.

**ACTION OPTION:** Motion to authorize the Mayor (or, in his absence, the Vice-Mayor) to sign Resolution Number 1305 approving the Intergovernmental Agreement with ADOT for the Cross-Town Trail Improvements Project. **VOTE.**

**RECOMMENDATION:** Staff recommends approval of the Resolution as it is a requirement for the IGA approved by Council on September 23, 2004.

**FISCAL ANALYSIS:** This action has no further impact than as previously approved.

Cross-Town Trail Improvements Project, CIP#S45-en a k a Central Core Multi-Use Path from Lake Valley Road to Mountain Valley Park HTE Code: 202-5510-700.73-40 Finance Proj. # CS0319		
FISCAL YEAR 2004/2005	Budget (from Town):	\$605,000.00
	Expended & Encumbered:	(\$76,951.68)
	Resolution:	\$0.00 < (this action)
	Balance:	\$528,048.32

**REVIEWED BY:**

Management Services Director William Kauppi Town Clerk Dore Russell

Town Attorney

Town Manager

The image shows two handwritten signatures. The top signature is written over a horizontal line and appears to be the signature of the Town Attorney. The bottom signature is also written over a horizontal line and appears to be the signature of the Town Manager. Both signatures are in dark ink and are somewhat stylized.

---

**COUNCIL ACTION:**

☐ Approved   ☐ Denied   ☐ Tabled/Deferred   ☐ Assigned to \_\_\_\_\_

**TOWN OF PRESCOTT VALLEY**  
**REQUEST FOR COUNCIL ACTION**  
**Date: September 23, 2004**

**SUBJECT:** Intergovernmental Agreement with ADOT for Cross-Town Trail Project Funding AND Amendment to Construction Administration Contract with Claycomb-Rockwell Associates, Inc.

**SUBMITTING DEPARTMENT:** Public Works

**PREPARED BY:** Kimberly J. Moon, P.E., Capital Projects Coordinator for Larry Tarkowski, Interim Town Manager and Public Works Director

**AGENDA LOCATION:** Comments/Communications ☐, Consent ☐, Work/Study ☐, New Business ☒, Public Hearing ☐, Second Reading ☐

---

**ATTACHMENTS:** a.) Intergovernmental Agreement (IGA)  
b.) Amendment to Agreement for Engineering and Other Services

---

**SUMMARY BACKGROUND:** The approved budget for Fiscal Year 2004/2005 includes the "Cross-Town Trail Improvements (ADOT) Project", also known as the Central Core Multi-Use Path Improvements Project, in the amount of \$605,000. The Arizona Department of Transportation has agreed to reimburse the Town for 100% of the expenditures, up to \$500,000, per the attached Intergovernmental Agreement (IGA).

The purpose of this project is to provide a multi-use path from Lake Valley Road to Mountain Valley Park. This project will provide improved access for pedestrians and bicyclists to three schools, two public parks and the Civic Center.

Claycomb-Rockwell & Associates (CRA) is close to completion of design, and the project is ready to go to bid shortly. A fee has been negotiated with CRA in an amount not-to-exceed \$61,300 for Construction Period Services, which includes construction administration, observation, staking, and compliance testing. This amount is less than costs proposed by ADOT for the same services.

This action is to approve both the IGA with ADOT AND to approve the Amendment with CRA.

This item addresses the Council's Management Action Plan goal of upgrading the quality of the existing streets, utilities, drainage, parks, and facilities for a more efficient Town infrastructure system.

---

**ACTION OPTION:** Motion to approve the Amendment to the Agreement for Engineering and Other Services with Claycomb-Rockwell & Associates, Inc. in the amount of \$61,300 for the Cross-Town Trail Improvements Project, AND Motion to approve the Intergovernmental Agreement with ADOT for partial funding of this project, OR Motion not to approve the Amendment and Agreement. **VOTE.**

**RECOMMENDATION:** Staff recommends approval of the Amendment with CRA for Construction Period Services **AND** the IGA with ADOT for partial funding for the Cross-Town Trail Improvements Project.

**FISCAL ANALYSIS:** As per this IGA, ADOT will provide up to \$500,000 for this project. The Town's approved budget this fiscal year is in the amount of \$605,000 (which includes the IGA funding).

Cross-Town Trail Improvments Project, CIP#S45-en a k a Central Core Multi-Use Path from Lake Valley Road to Mountain Valley Park HTE Code: 202-5510-700.73-40 Finance Proj. # CS0319		
FISCAL YEAR 2004/2005	FY 04-05 Budget:	\$605,000.00
	Expended:	(\$2,408.27)
	Encumbered:	(\$13,243.41)
	Engineering Amendment:	(\$61,300.00) < (this action)
	Balance:	\$589,348.32

The original cost estimates for this project were prepared in the year 2000. The budget was determined based on these cost estimates. Staff anticipates that the bids received for this project may experience the same increase as other recent Town projects, because the estimates are several years old and construction costs have increased during that time. Additional Town funds will be required to cover these increased costs, if they occur, per the IGA.

**REVIEWED BY:**

Management Services Director \_\_\_\_\_

Town Clerk \_\_\_\_\_

Town Attorney \_\_\_\_\_

Town Manager \_\_\_\_\_

**COUNCIL ACTION:**

☒ Approved ☐ Denied ☐ Tabled/Deferred ☐ Assigned to \_\_\_\_\_

9-23-04  
DR



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-1047TRN (**JPA 04-037**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: November 3, 2004

TERRY GODDARD  
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section